

REMARKS

Claims 1-10 and 34 are now pending in the application. Claims 11-33 have been cancelled. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

ELECTION/RESTRICTION

In the Office Action, the Examiner alleges that newly submitted amended claims 2-5 and 34 are directed to an invention that is independent and distinct from the invention originally claimed. In support of this proposition, the Examiner indicates that claim 2 now recites subject matter which corresponds to Figure 5, while the original claims correspond to Figure 1 which is a different embodiment. It is respectfully submitted, however, that claims 2-5 and 34 have always read upon the embodiment shown in Figure 5 and not the embodiment shown in Figure 1.

Specifically, original claim 2, as presented when the application was filed, called for "a forth [sic] flow path operable to supply a third anode reactant feed stream to said third flow path; and a forth [sic] valve in said forth [sic] flow path operable to modulate flow through said forth [sic] flow path." This fourth flow path called for in claim 2, however, is not present in the embodiments shown in Figures 1 or 2. Rather, this fourth flow path is only present in Figure 5. In particular, it is noted that Figure 1 discloses a third flow path 52 that extends between the outlets of anode sections 30, 32. Third flow path 52 shown in Figure 1, however, does not communicate with a fourth flow path which is operable to supply a third anode reactant feed stream to the third flow path. Rather, Figure 1 clearly shows a valve 54 that communicates with third flow path 52 to

allow anode effluent to be vented therefrom. There is no disclosure in Figure 1 of a flow path communicating with third flow path 52 that is operable to supply a third anode reactant feed stream to third flow path 52.

Rather, the fourth flow path called for in claim 2 is only in the embodiment shown in Figure 5. In particular, the embodiment shown in Figure 5 includes a fourth flow path 100 and valve 102 that are used to provide a third anode reactant stream 104 to third flow path 52. See at least Figure 5 and paragraph [0045] of the instant application. Thus, claim 2 as originally presented when the application was filed corresponded to the embodiment shown in Figure 5. Original claim 2 never corresponded to the embodiment shown in Figure 1 because Figure 1 does not disclose the fourth flow path.

Thus, it is respectfully submitted that the Examiner is mistaken in the assertion that the original claims only corresponded to the embodiment shown in Figure 1. Rather, as clearly indicated above, some of the original claims corresponded only to the embodiment shown in Figure 5. Thus, the Examiner's statement is incorrect and does not support the assertion that the invention has been constructively elected by original presentation for prosecution on the merits to only the embodiment shown in Figure 1. Rather, the original claims clearly called for subject matter disclosed in all of the embodiments shown in the figures and, as such, were never limited solely to the embodiment shown in Figure 1.

Claims 3-5 and 34 all depend from claim 2 and, therefore, for at least the same reason are also part of the invention that was originally presented for evaluation on the merits. As such, withdrawal of the Election/Restriction Requirement is requested.

Furthermore, Applicants respectfully point out that the Examiner's assertion is not timely. Specifically, in addition to the original claims disclosing subject matter that is related to each of the embodiments and some of which can only be found in the embodiment shown in Figure 5, the instant claims have already undergone numerous examinations on the merits without objection or request for restriction on the part of the Examiner. In particular, Applicants note that on April 25, 2006, a Restriction/Species Requirement was requested wherein the Examiner did not make any assertion that original claims 1-10 called for independent or distinct inventions. Following a response to that Election/Restriction Requirement, Applicants have received three subsequent Office Actions (mailing dates of June 6, 2006; January 3, 2007; and April 13, 2007), wherein the Examiner has never raised this issue while original claim 2 and possible amendments thereto have been presented. Additionally, Applicants have filed and paid for a Request for Continued Examination on March 20, 2007.

Thus, Applicants respectfully submit that the Examiner's assertion that claim 2 and the claims that depend therefrom are now directed to an invention that is independent or distinct from the invention originally claimed is not correct. Furthermore, Applicants have spent a great deal of effort, time, and expense on addressing these claims on the merits and the Examiner has examined these claims on the merits. The assertion now that these claims are a separate and distinct invention is untimely and should have been raised earlier.

Thus, for at least these reasons it is respectfully submitted that the Examiner's position is without merit and that the instant Election/Restriction Requirement is improper. Accordingly, Applicants respectfully request that claims 2-5 and 34 be

evaluated on their merits as Applicants have presented these claims throughout numerous actions on the merits and should have been fully searched by the Examiner prior to this Office Action.

PETITION DIRECTOR

If the restriction requirement is maintained and made final, Applicants preserve the right to petition the Director to review the requirement now or may defer the petition until after final action or allowance of claims.

REJECTION UNDER 35 U.S.C. § 112

Claims 1 and 5-10 stand rejected under 35 U.S.C. § 112, second paragraph. Applicants respectfully assert that the instant objection is without merit. In particular, in the Office Action the Examiner indicates that the recitation of “operational state” is unclear. Further, the Examiner goes on to interpret the term “operational state” as only corresponding to a state wherein the valve is open. It is respectfully submitted, however, that such an interpretation is unduly limited and does not comport with the ordinary everyday mean of the claim language and further does not comport with MPEP § 2111 wherein when interpreting the meaning of the terms in a claim the terms are to be given their broadest reasonable interpretation consistent with the specification.

In particular, the Examiner appears to want to limit “operational state” to only when the valve is open. Thus, under the Examiner’s interpretation the only “operational state” of a valve is when the valve is open. It is respectfully submitted, however, that a valve, at a minimum, has at least two different operational states. In particular, a valve

can at least be open or closed. Thus, the valve being open is one operational state, while the valve being closed is a second operational state. When the valve is open, the operation of the valve is to allow flow therethrough. When the valve is closed, the operation of the valve is to prevent flow therethrough. These are both operational states of a valve. Such interpretation of a valve is reasonable and, furthermore, is supported by the ordinary and plain meaning of the terms as known to one skilled in the art. Thus, it is respectfully submitted that a valve has at least two operational states—open and closed.

Furthermore, some valves have at least three operational states. For example, some valves have the additional capability to restrict or throttle flow therethrough (i.e., a partially open state/partially closed state). This capability is well known to one skilled in the art. As such, these valves would have, at a minimum, at least three operational states—open, closed, and partially open/closed. Furthermore, the application does not limit the operational state of a valve to only corresponding when the valve is open.

As such, it is respectfully submitted that when the term “operational state” is given the broadest reasonable interpretation consistent with the specification, such interpretation would include at least two operational states—open and closed. Furthermore, it is a reasonable interpretation to include additional operational states between the open and closed states.

Accordingly, for at least these reasons it is respectfully submitted that the instant rejection is improper and that the instant claims point out and distinctly claim the subject matter which Applicants regard as the invention. As such, withdrawal of the instant rejection is requested.

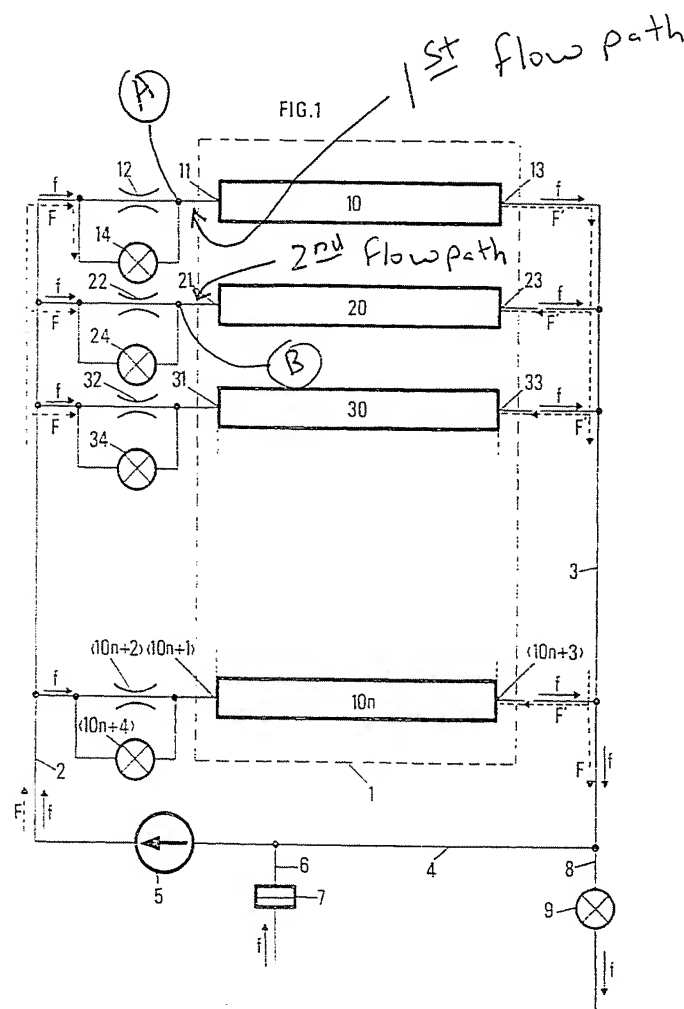
REJECTION UNDER 35 U.S.C. § 102

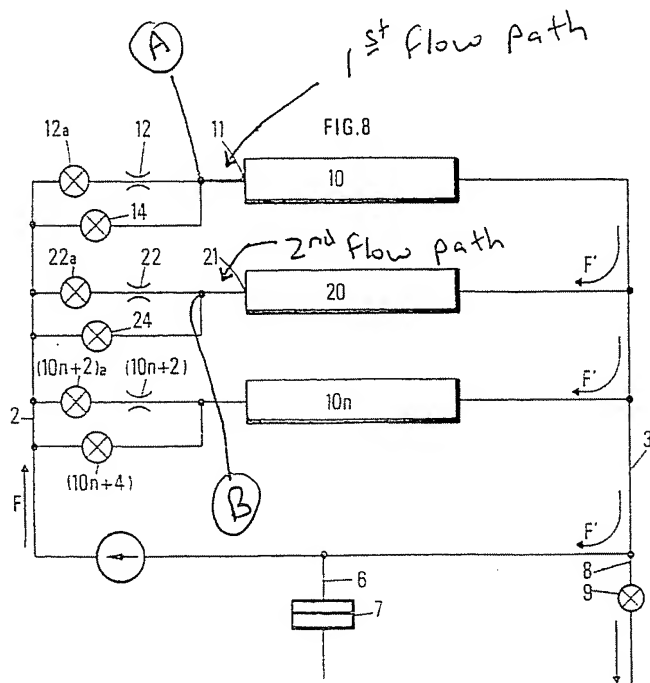
Claims 1 and 5-9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cheron (U.S. Pat. No. 4,243,731). This rejection is respectfully traversed.

Claims 1 and 5-9 are not anticipated by the Cheron reference because the Cheron reference fails to disclose first and second devices in the respective first and second flow paths that are operable to modulate the entire flow of the respective first and second anode reactant feed streams through the respective first and second flow paths as called for in claim 1.

Specifically, claim 1 calls for a first flow path which supplies a first anode reactant feed stream to the inlet of a first anode section, the first anode reactant feed stream being the only anode reactant feed stream flowing into the first anode section through the first inlet. Similarly, claim 1 also calls for a second flow path which is distinct and separate from the first flow path and is operable to supply a second anode reactant feed stream distinct and separate from the first anode reactant feed stream to the inlet of the second anode section, the second anode reactant feed stream being the only anode reactant feed stream flowing into the second anode section through the second inlet. Thus, only a single anode reactant feed stream flows into each of the first and second anode sections through their respective inlets. Furthermore, these single feed streams flow through respective first and second flow paths. Thus, the first and second flow paths correspond to the flow paths having only a single feed stream flowing therethrough.

When looking at the Cheron reference, it becomes apparent that the only sections of the mechanization disclosed in the Cheron reference that correspond to these first and second flow paths correspond to the flow paths that extend from the inlet of one of the anode sections to the junction of that flow path with two other flow paths. Applicants have included herewith marked-up Figures 1 and 8 from the Cheron reference wherein the first and second flow paths are indicated. As can be seen, the first flow path only extends between a junction point, indicated as A in the marked-up drawings, to the inlet of anode section 10. Similarly, the second flow path only corresponds to the section that extends from a junction point, indicated as B in the marked-up drawings, to the inlet of second anode section 20. The flow paths to the left of points A and B cannot be considered equivalent to the first and second flow paths called for in the claims because there are two distinct and separate streams that can flow therethrough that join together at junction points A, B. As such, if either the first or second flow path were to be considered to extend to the left of junction points A, B, such flow path would carry two separate and distinct flows (one through regulators 12, 22 and the other through valves 14, 24) to the respective anode sections 10, 20. As such, the first and second flow paths cannot be considered to extend to the left of junction points A, B in the mechanizations shown in the Cheron reference.





With the mechanization of Cheron now understood with respect to the subject matter of claim 1, it becomes readily apparent that the first and second flow paths do not include respective first and second devices that are each operable to modulate an entire flow of the respective first and second anode reactant streams through the respective first and second flow paths. Rather, these flow paths clearly have no device or other obstruction therein that is operable to modulate the entire flow therethrough.

Rather, the Cheron reference discloses multiple flow control devices, such as regulators 12, 22 (and valves 12a, 22a for the embodiment of Figure 8) that can regulate flow through that particular flow path and valves 14, 24 that can regulate flow through the respective bypass flow paths. Neither of these flow paths, however, corresponds to the first and second flow paths called for. As such, the Cheron

reference does not disclose first and second devices in the respective first and second flow paths which are operable to module the entire flow of the respective first and second anode reactant feed streams through the respective first and second flow paths.

Accordingly, for at least this reason it is respectfully submitted that the Cheron reference fails to disclose the subject matter of claim 1. As such, it is respectfully submitted that claim 1 and the claims that depend therefrom, claims 2-9 and 34, are not anticipated by the Cheron reference. Thus, withdrawal of the instant rejection is requested.

Furthermore, the fact that some of the valves of the Cheron reference can be closed while the others may remain open does not change the mechanization disclosed in the Cheron reference. That is, while some valves may be capable of being closed while others are open, the fact is that the Cheron reference still discloses that each anode section includes a primary flow path and a bypass flow path, that merge together (at junctions A and B) into Applicants' first and second flow paths, that are connected to the inlets of the respective first and second inlet sections 10, 20. Moreover, in the Office Action the Examiner seems to indicate that at T_0 , if all of the valves are closed all of the anode reactant feed enters into one flow path directed by f and considers that to be showing that the entire reactant feed will go through the same flow path. This assertion, however, fails to address the subject matter of claim 1 wherein the first and second flow paths are disclosed as being distinct and separate from one another and, further, the first and second anode reactant streams are also distinct and separate from one another. Thus, Applicants are not aware of why the Examiner makes such a statement as such does not address the subject matter called for in claim 1.

Accordingly, for at least this additional reason it is respectfully submitted that the Cheron reference does not disclose the subject matter of claims 1-10 and 34 and withdrawal of the instant rejection is requested.

Moreover, in the Office Action the Examiner seems to be confusing a disruption in flow with "flow communication" called for in claim 1. In particular, Applicants respectfully assert that flow communication simply means that the third flow path allows communication between the first and second anode sections through the outlets. With flow communication existing, flow therebetween can occur, depending upon the conditions in the flow path and the respective anode sections. The valve called for does not impede the flow communication because the valve does not change the fact that the first and second anode sections are in flow communication through their outlets and the third flow path. Whether or not fluid flowing therethrough would flow from one anode section to the other through the third flow path during operation does not change the fact that those two anode sections are in flow communication through the third flow path. The claim does not require that a particular fluid flow travels from one anode section to the other through the third flow path.

Rather, the claim merely states the third flow path provides flow communication between the first and second anode sections through the outlets and that a valve communicating with the third flow path does not impede the flow communication. Thus, the Examiner's recitation of possible disruption to the flow has absolutely no bearing or relevance to the subject matter called for in the claims. As such, Applicants are unaware of why the Examiner has made such statements in the Office Action, being that they are not germane to the subject matter of claim 1. Accordingly, for at least this

additional reason it is respectfully submitted that the Examiner has failed to establish that the Cheron reference anticipates claims 1-10 and 34 of the instant application and withdrawal of the instant rejection is requested.

REJECTION UNDER 35 U.S.C. § 103

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheron. This rejection is respectfully traversed. Notwithstanding, claim 10 depends from claim 1 and, therefore, for at least the same reasons stated above with reference to claim 1 is patentable. Accordingly, withdrawal of the instant rejection is requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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